Supreme Court, U.S.
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(3)

No.03-1373

In The

Supreme Court of the United States

CLEMENT A. ST.HILAIRE
Petitioner,
vs.

GRACE A. ST.HILAIRE
Respondent,

PETITIONER REBUTAL OF A WRIT OF CERTIORARI
OF APPEALS COURT FOR THE
STATE OF MAINE

REBUTAL TO RESPONDENT'S BRIEF OF
WRIT OF CERTIORARI

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APRIL 16, 2004

ANSWERS QUESTION PRESENTED

1.)Party Aggrieved by what is considered to be an evasion of that mandate by the State Court may be confronted with difficult procedural problems in securing an immediate second Supreme Court Review, especially if the decision on remand purports to rest in whole or in part on a nonfederal ground.

2.) Regading Appointment of Receiver, "Ex-Parte" Interlocutory Order is Ripe for review at any Point with in the Proceeding that was not a Final Order but failure of the Respondent Breach of Contract Settlement Agree ment Contempt beyond the Statute of Limitation.

3.)YES; There is now and were Federal Questions of Law The Supreme Court Mandate issued Misapprehended an Ambiguous an requested court review M.R.Civ P. Rule 60 (b) action was an Interlocutory Judgment.

4.) Where **Violation of Constitutional Law** .Principal of Contract Settlement Divorce Agreement a disobediance Contempt of Respondent in failure to sell for over 18yr, and Newly Discovered Evidence No Escrow account of and other Consequence, of Supreme Court Failure in Ruling on **"One More Asset"** beyond the Contract Agreement **Major colorable Merits equity in Controversy for Review.**

5.)After Breach and Failure in Carrying out the Expedi dious Fashion Sale A New Responsibility acted forced by Justice the Respondent to acquire under a new issue Attorney Subsequent Issue at Law of Contracts defied by Breach of Divorce Agreement as Respondent caused the Problem.

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PROCEDURAL HISTORY OF CASE

The Appeal under M.R.Civ.P. Rule 60 (b) of the Maine Law Court Decision of February 5, 2004 Order appoint ing Ex-parte a Receiver, an The Withdrawal of Defend-ant Counsel refusal to Appeal the decisioned Order.The Newly Discovered Evidence of the Respondent's hadn't had any Escrow Account of Revenue,Was discovered in the Deposition.Respondent stated "their's no escrow of fund"Conversion 18 years far beyond the essence time, but with intent of disobedient to the courts.This Being a Contrary to Expeditiously Fashion of Selling Property. Respondent eccentricly refused, to live in the home, her self, but choose on Capitalized the advantage or profits for **eighteen years** Subsequently collected a net income monthly. 37 AM.Jur. 2d Fraud and Deceit § 12 (1968) The Divorce original Decree December 7, 1983 Contract Agreement,That provided Scott a home youngest son Enjoyment The decree never Appelled by neither Party That execution of Settlement Agreement in the future date and affirmance of the specific performance judgm ent of the Marital Property to be finalized.

Merit of Case Facts Colorable

The Maine Supreme Judicial Court Decided May29 1987 Wardwell v. Wardwell Court States;(That did not occur in this case. The Court did not make any change in that distribution,but properly exercised its power to enforce its previous divorce decree.Cf.Fitzgerald v.Trueworthy 476 A 2d 183 , Me. 1984)"Provision of divorce judgment ordering sale of Marital home imposed in personam ob ligation to sell property without affecting a transfer of Marital Assets.")Meritorious defense Colorable and not and are true and not frivolous. Title Property Interest. Hart v. Terry L.Hopkins, Inc. 588 A 2d 1187 1190 (Me.) (1991)The Law Court Failure in Scrutinizing carefully all aspects of disposition to ensure that each aspect was in a Commercial reasonable "Id, U.C.C.c.mt.2. retail value

(Parallel) to St.Hilaire v. St.Hilaire case at bar,) Intention Future severance of the Joint Tenancy that was never a Final Decree,and Compounded effect *After* Post divorce egregious conduct of Respondent's Breach Contract of Divorce ArgreementThat refusing to sell and continued Leasing of property"Use"**An Other Asset** under Breach of Conditions The July 30, 2002 of the Justice Delahanty J. informing the Respondent to Acquire Counsel for her own after the Breach of the original Decree agreements that the Petitioner is not responsible for her Action her failure in not selling the Marital Property with Unjustifiable Enrichment of Unfairness rings hollow as Income. Donald F. Gordon Cum. 03-369 Me. Feb.26, 2004 There fore was never a Final Judgment but an agreement that affected by a divorce and held that each party was entit led to a "one-half interest" in the Partitioned real estate of Id. at 18-23, 70 A 2d at 870-72 Tenancy in common .

Jurisdictions General Rule

That Divorce itself does not terminate a joint tenancy, but when the parties express their intention to severed the joint tenancy or engage in conduct that is inconsistent with a joint tenancy **is severed.**(Respondent breach) The Maine precedent most analogous to the Situation is Fitzgerald v. Trueworthy, 476 A 2d 183 (Me. 1984).That The Estate of Coleman, 395 N.E. 2d 1209, 1211 (Ill. App. Ct.1979).these Jurisdictions.Respondent unfulfilled duty obligation imposed upon her by the Shifted July 7, 1986 Responsibility By Justice Delahanty IIThe Petitioner was deprived of a Constitutionally fail to protect the interest without due process of law when Court Order him pay fees and cost without first holding Evidentiary hearing. RECEIVERSHIP ISSUE ; was not part of the Settlement Agreement, but instead abuse its discreation. Accepting as a favor when in Contempt of Court violating specific performance judgment the agreement included both an clauses "boilerplate" of Specificness of Limitation of the

OBJECTION TO RESPONDENT'S ARGUMENT

Exclusive Possesion Time. See: Linscott v. Foy Yor-97-703 Aug. 11, 1998. Divorce Source Statute of limitation "But nothing in the Interlocutory Appeal Act itself and depart from its usual rules respecting review of interlocutory judgments."Supreme Court Practice Ch.4 pg 261 **4.19** Effect of Interlocutory Appeals Act. of 1958, 28 U.S. § 1292 (b).The Court granted review (Murphy Bros,Inc. v. Michetti Pipe Stringing Inc. 526 U.S. 344 (1999).
79 A.L.R. 2d 1390 § 22. Appointment of Receiver is not subject to review on appeal from a final Judgment. § 22 Illinois American Radiator Co. v. Walker (1934) 276 Ill. App 150 ,and First Trust Joint Stock Land Bank v.Cutler (1938) 293 Ill. App. 354, 12 N.E. 2d 705 Both infra.

The Jurisdiction 28 U.S.C. § 1254.

" Stainback v. MoHock Ke Lok Po. 336 U.S. 368, 370-71 (1949) InThis case a direct appeal was taken to Supreme Court form a Judgment of a Three Judge district Court in Hawii. To gauard against as frustration of review by the Supreme Court's refusal to accept jurisdiction over the appeal, the appellants took a timely appeal to court of appeals. The Court then issued a Writ of Certiorari before Judgment " to avoid further furtile proceedings" heard the case on appeal and on certiorari at same time. In Burrell v. McCray 426 U.S. 471 (1976) In (per curiam) Id. at 472,473 Justice Brennan and Marshall dissented on the grounds That:such dismissals are proper only when more intensive consideration of the issues the record is record in the case that attend full briefing and oral argu ment reveals that conditions original thought to justify

Granting the Writ of Certiorari are not in fact present. [Ex-Parte] Hearing on attachment M.R.Civ.P.4 A (c)and 4 B (c) are as follows: RULE 4A Attachment (c) [Writ of Attachment]Service...No property may be attached and unless such attachment for a specific amount approved

by order of the court. Except as provided in subdivision (g) of this rule [exparte hearings on attachments],order of the approval may be entered only after Notice to the Defendant and hearing and upon a finding by the court that it is. Liberty v. Liberty Cum. 00-292 Jan. 30 2001 Orders for attachment process are immediately appeala ble a exceptions to the final Judgment rule. See; Plourde v. Plourde 678 A 2d 1032, 1035(Me. 1996)(Citing Boivert v. Boivert, 672 A 2d 96, 97 n.2 (Me. 1996) Tort Cases.

PETITIONER FEE HALF PROPERTY INTEREST

The relevant facts Neither received prior Notice of sale Violated its due process rights, afforded by **Fourteenth Amendment to the United State Constitution.**

relied on Mennonite Bd. of Missions v. Adams 462 U.S. 791, 800,(1983) States:"in which the Supreme Court that "[N]otice.... by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding whch will adversely affect the liberty or property interest of any party Given that the defendant possesed a fee interest in the property ibid. See Tony B. Bahnan vs. PHNB Realty Inc. No. 98-P-0610. no merits Obligation Imposed;"Fitzgerald; The Divorce Judgment in Imposing that personal duty upon both parties was completely blind, to the exact status, of the legal title to the premises; it made no difference whether either one was the sole title holder or they held it as tenants in Common or joint tenants.When the time came to effect of the even division, whichever of them held the legal title in whole or part was Obligated by Court order to carry out the partition by sale. Id. at 185-86."

The Procedual History being incorrect of putting off the Alledged amount 5,558 .Which if made proper research That the*"After"* Post- Divorce payment for the Order of Default Justice Order,is Jurisdictional procedure Change of Date. Superior Court Aug.5,1992 byJustice Alexander

J.,Now the Law Court Justice) Forced the Petitioner pay with incarceration Post-Divorce Investment $ 11,119.11 Respondent Capitalzed on Concealing Rental reaping collected the benefits as disobient, Court order Escrow accounts Frudulent conduct of the Property.

The Petitioner's **Constitutional rights in his Defense.** On"Tantamount"Title to Real Estate Involved on their Property Rights,Taken by Judge an" Ex-Parte" Order of Receivership in the Justice Delahanty J.II on Jun18,2003 the Petitioner being Co-owner one half interestTitle to Marital Home."If a person entitled to there possesion of Personal Property demands its the return, under dominion and control, that was unjustified the refusal to give the property back is Conversion. see; Edwards v. Jenkins (1932) 214 Cal. 713, 720, Witkin, (supra at section 622,) United States 365 U.S. 857, 858.... 3 AM. Jur. 2d § 19, 3 A Corbin Contract § 611 (1960). U.S. (Sixth Circuit Orchard Group v. Konica Med. Corp. No. 96-3686 App 98 .A 0041P. No specific years.amount Stated Fraud.The Petitioner's Appeal to the Maine Law Court early conserving timely rights to action of the Receiver While under Appeal sold the Property.Petitioner right's were but Absolute where he owned half to Bid-in prior before the Sale, Never received any"Notice" ludicrous of the purchaser Option, nor was Property ever Apprai sed for a fair market violation it was the Receiver duty. The Dec. 7, 1983 Divorce Decree was agreements that an that Stated:(The Marital Property results be[S]old in a Commercial manner **Bring the best possesible price.** Receiver"Fiduciarious" violated relationship to Seller's. The Property was sold to buyer at bay in 17 days at real low price $ 79,500.00 with adjacents lots unaware to the Petitioner.building lots 410 land was assesed at20,000.00 they gave the home away.That Justice Cole J. Stated;on July 8, 2003,(I will give you a the right to bid on Home). The appeal was filed in 24 days during February, in the

Maine Law Court.The original Dec. 7,1983 Divor.decree States;"The Defendant shall not suffer waste to said premises nor encumber the same in any manner without the expressed written consent of the Defendant")Rental was waste There shall be no" Encumbrance "One that has a legal Claim of consistent with pursuance of the fee by conveyance."That Obstructs action for the debts of" Co-owner half Interest" in the property See; Knudson v. Weeks D.C. Okl. 394 F. Supp.963, 976, a Warranty of title purchase U.C. C. § 2-312 Black's Law Dict. Sixth ed. Pg. 527 Title to Real Property of the Petitioner's Rights that Sold, to a Third Party.The Fraud Transfer contrary to the Contract in Divorce U.S. Constitution Amend,1, Article 1,Sec. 8, Uniform Fraudulent Trans Act.Farstveet Judge see; Farstveet 2000 ND. 189, ¶ ¶ 23, 24, N.D.C.C. ¶ 13-02-05 (2) Receivership Property (a.) "Substance"of "Extrinic"*After* of Post Divorce Controversy Palanza v. Lufkin 2002 Me. 143 Cum. 02-134 Aug. 22, 2002 . 59 A Am.Jur. 2d Partition § 226 (1987).Unjust Enrichment. (b) "Procedure"a agrreived"party Having 30 days to Appeal Maine Law (**c.**) Conversion under Contracts sufficiently go to the Merits of the [350 U.S. 198, 208] United State Arbitration Act.III. 2, of 1925 that makes the matters one of **"Substance"**of the Revenue deprived 18 yrs enjoyment"use"**(d.)**sold while under Law Court Appeal were aware of the " Silent" of Statute Limitation Being (Three Years) the decrees silence"Ambiguity"of Exclusive Possesion, The Divorce Source law exceeds reasonable Whether is Ambiguious is a Question of Law.Austin v. Austin 2000 Me. 61 ¶4, 748 A 2d 996,998,time(Where Defendant had only two years Exclusive.) e. g.Md.Fam. Law Code Ann. 8-210 1991 Wis. status. Ann 767 .255 (7) (West law Supp 1995).**(e.)**The July 7, 1986 "Shifted"Resp onsibility to sell,was "Silent a Reciprocal"the Rental paid by the Defendant of $ 200.00 a Month due on the tenth of each month of Respondent'"Identical demand.

Respondent failure in paying $ 200.00 month"Use"and the enjoyment an IRS. Tax Deduction that exceeded 18 years abuse to the Petitioner refusing to sell in denial of ever paying 200.00 a month to defendant of the equity in the Property.(f.)The Receivership was waste in funds and Caused more conflict of Interest never were discus sed with the Defendant, The Contract Decree of Dec. 7, 1983 was in opposition of the Contract Making All the Above Breach of Contract Rights.

4 M.R.S.A. § 105 (2003);14 M.R.S.A. § 6051 (2003) At Bar similarly: The Defendants now object to the terms they negotiat."Ex-parte"Petition,rely on cases very different from this case and argue that the doctrine of seperation of powers requires of rescinding authority they them selves requested,See; Hedges v Dixon County, 150 U.S. 182,192,(1893) (Court of equity cannot enforce Contract void at Law); LaShawn v. Barry, 144 F.3d 847, 853 D.C. Cir.1998).Maine in an effective manner according to the provision of the Consent Decree and Settlement Agreement See; RBK Caly Corp.BrewerWater Dist.CV-94-555 (Me. Super. Ct. Pen. Cty. CDec. 23 1994).

State of Maine Constitution Article 1. protecting prop erty Section; 6.nor be deprived of property,but by judg ment of his peers,or the law of the land.Section 6 A dep deprived thee or property without due process of law nor be denied the equal protection of the law in nor be discriminated against in the exercise thereof.. Id.at ¶ 24. Plaintiff Counselor Judith Andrucki Esq.Violated a Pres sion rules of Code Conduct. **1.**)The counsel did not read the Original Contract in Deed of which the Law Court Affirmed the coventure in Contract Agreement, Warranting the First Rights of Real Property Merger of the Defendants "Preferential Rights"as First Optional rights with that proper"Notice of third party purchaser a not being Property Counselor know that she Breach ed the Covenantor in Contract, as agreement the never

Appealed Divorce Decree,or never read the Decree The Term" Encumber" or Encumbrance See;[Includes every right to,or interest in land which may subsist in another to the diminution of its value, consistent with passing of the fee".]Dec 7,1983 Black's Law Dictionary(4thed.1951) Warranty Quiet enjoyment.Petitioner's one half Co-owner interest. The Term its " Preferential Rights"... refers generally an right to elect to purchase property interest owned by another person upon the occurrence of trigg ering event. Property See; Knudson v. Weeks D.C.Okl. 394 F supp. 963, 976, A Warranty of Title purchase U.C.C. § 2-312 Black's Law Dict. Sixth ed. Pg. 527 real Property under the Petitioner's Rights. **2.)** Once again Andrucki Failed to read the decree Orders States Alleged alimony due to Was Denied: July 7, 1986 Delahanty II.Order Justice Page 5. Article B. States; Plaintiff's Motion for the contempt and enforcement regarding alimony payments and for arrears is is"Denied"See Professional Code of Responsibility: DR 2-102 (a) (1), (2) (3) (4), and (6); DR 20102 (C) and (D). EC 2-103.) Analysis IV. Problem 2: "**feeder**"aspect is particular importance. Ethical Character Canon 9 of the American Bar Association Code of Professional conduct Responsibility. *The attorney, therefore,has an obligation to establish necessary safeguards to eli mate even the appearance of improper practices.and an impro per relationship between him self and his Sublessee.*

Therefore Sublessee Ann Brandt within firm house and the Respondents Counsel is seeking relief under Rule11 of the Federal Rules of Civil Procedure,he has not alleged satisfaction of the safe harbor provision of that Rule. For these reasons, I ***Deny*** the Plaintiff Motion for Legal fees and expenses.

"TITLE TO REAL ESTATE IS INVOLVED"

"Property Sold to bring the Best Possible Value"

14 M.R.S.A. § 2002 Chapter 403 no appraisel whom failed to Appeal from the first order appointing a **Receiver**

Could not afterwards,upon facts appointment irregular intent, wrongful:Texas Saunders v. Kempner (1895,Tex. Civ. App.) 32 SW.585. (July 3,1986 **(a)** the Justice stated; (she could rent it for the Winter of 1987, so it would not Freeze Up.) § 11-102 there were no Rental Disclosure of purchase agreements terms [1991, c.(new) .787].

"Uniform Commercial Code "Pending sale, Defendant shall pay to plaintiff the sum of two hundred a 00/100 dollars ($200.00) per month **"as rent"** on or before the tenth day of each month, commencing July 10, 1986.) (**b.**)The Defendant not having ever receiving the Tenth of every month since Aug. 5, 1986 Shifting " As Rent " Due the Defendant since accumulated to *"after"* divorce existing an open ended Contract The Maine Supreme Courts Failed to address the **" One More Asset"** rental in the original decree is beyond dought Within Review M.R.Civ.P. Rule 60 (b) of the Decree Original in Dec. 7, 1983 never [be adjusted] but ignored about future use " Enjoyment .**Major Controversy;** The Defendant forced to pay the Plaintiff $ 200.00 Month due "Use"Responsibility Shifted the resulted 228 Months. $ 200.00 x 228 = $ 45, 600.00 after divorce payment of $ 11,119.11Total $ 56, 719.11 with interest to date due. 2 American Law interest of Property 10,22,28,- 32 (1952).

(1.) I, Petitioner Demand the Full Amount of Proceeds of the erroneous sale and Court fees the Respondent,to Pay all cost of Courts and Attorney fees.

(2.) I,Hold the Receiver,Norman J Rattey and Judit And rucki Esq. And Ann Brandt Esq. David M. Hirshon and Broker FirmAll violation of Uniform Commercial Code wareThe Marital Residence was to be sold in A Commercial Manner I,Am entitled for the loss Constitutionally of And Liability to Lapionte All Five Parties are Charge with"Three times Value "for Negligent sale in the duty of Receiver, Respondent Broker well aware.

"Char'e d'affaires ,consule"

10.
CONCLUSION

The Writ of Certiorari for a good Reasons stated above This Court should Grant a Review of the Decision that State Maine,Law Court Appealing the Reciever"exparte order"Interlocutory Action of Title to Real Estate Right, Involved, pendente lite. Contempt, Counter Action, in the lower Court,an Defendants' Counsel was Retained Conflicting fidelity, Irreconcilable withdrawn violated professional code of conduct under set-off claim.Newly discovered evidence of Intentionally concealed Deprived Fiduciary Account expressed Escrow order Fraud, the Judged, Immediate Sale, intended ,Laches of 18year rental income as unjust Enrichment abusd "substance" of merits of "question of law" in Prejudice [a]mended, the Contract,purchase plaintiff"sought unite"that Judge violated error the Constitutional Title Colorable Rights merits having Interest in Property.

Respectfully submitted,

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